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SPECTRADYNE

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December 29, 1992

VIA OVERNIGHT EXPRESS

Office of the Secretary to the Commission
Federal Communications Commission
Room 222
1919 "M" Street Northwest
Washington, D.C. 20554

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RE: Comments of Spectradyne;
In the matter of Implementation of the Cable Television
Consumer Protection and Competition Act of 1992
MM Docket No. 92-259

FCC - MAIL ROOM

To the Secretary:

Please file the within comments of Spectradyne in the above-described matter.

Additionally, please date and mark "Filed" the enclosed spare copy of Spectradyne's comments and return that stamped copy to me in the enclosed, self-addressed, stamped envelope.

If you or your staff have any questions, please phone me at 800-338-6715, extension 9051. Thank you for your assistance.

Sincerely,

SPECTRADYNE, INC.

David E. Tripp

David E. Tripp

/rlt
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

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In the Matter of)

Implementation of the Cable Television)
Consumer Protection and Competition)
Act of 1992 ("The 1992 Act"))

Broadcast Signal Carriage Issues)

MM Docket No. 92-259

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COMMENTS OF SPECTRADYNE

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December 29, 1992

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Summary

Spectradyne provides a variety of video entertainment, in-room guest-pay movies, satellite-delivered programming and guest-interactive channels to more than a half million hotel guest rooms daily in more than 2300 hotels in the United States.

In those instances where Spectradyne also assists in the relay of local, over-the-air broadcast television station signals to hotel guests, at no charge, over the hotel master antenna system, and where the signal is relayed without delay or editing of any form, the imposition of the cumbersome and expensive requirement that Spectradyne seek consent of each such local broadcast station in each city for such relay at each hotel causes a significant distortion of Spectradyne's ability to provide effective competition with cable television services and other multichannel video entertainment service providers.

Accordingly, Spectradyne submits that the Commission address the relay or distribution of such signals by entities such as Spectradyne and that the Commission adopt regulations that construe and interpret The 1992 Act in such a way as to exempt individual, closed-circuit hotels, hospitals, and multiple-resident structures from the requirement of obtaining consent for retransmission of local, over-the-air signals at such structures or interpret The 1992 Act in such a way as to define the simultaneous delivery of such over-the-air signals at such structures in closed circuit as not being a retransmission requiring consent of such broadcasters.

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)	
Broadcast Signal Carriage Issues)	

COMMENTS OF SPECTRADYNE

Spectradyne, Inc., hereby submits its comments in response to the Notice of Proposed Rule Making (released November 19, 1992; hereinafter, the "Notice") in the above-referenced proceeding.

Nature of Spectradyne's Operations

1. Spectradyne is the largest provider of in-room televised entertainment services to the lodging industry in the United States. Spectradyne serves over 2300 hotels with over half a million guest rooms. Spectradyne offers guests pay-per-view entertainment and motion pictures, free-to-guest satellite video programming, and guest-interactive services.

2. Spectradyne's pay-per-view system, "Spectravision," offers both regularly-scheduled and view-on-demand, full-length feature motion pictures and entertainment programming for viewing by the hotel guest on the television set in his room. The guest selects a program or "movie" through Spectradyne's signal convertor attached to the television set. The movie is transmitted to the guest's room through the hotel's system of internal wiring ("MATV"). The movies usually originate from within the hotel on Spectradyne's video rack, a cabinet that holds computer-controlled video cassette players. The guest's selection of a movie is automatically recorded by Spectradyne's billing computer in the hotel. There is no charge to the hotel for the pay-per-view programming. Payment for the movies watched is made by the guest at the time that the hotel bill is paid. Spectravision pay-per-view programming is an important amenity offered to guests in the lodging industry, and has become an attractive alternative to cable services and to a hotel's providing only local television fare.

3. Spectradyne's free-to-guest satellite-delivered programming includes such services as HBO, ESPN, CNN, the Disney Channel, and superstations such as WTBS. These services are usually received and delivered via a typical SMATV system. Spectradyne's receive-only satellite earth station on the hotel premises receives the programming which is delivered through the hotel's MATV to the guests' rooms. In certain cities, the satellite programming services are downlinked at one location and transmitted by microwave to nearby Spectradyne-served hotels. The

hotel pays Spectradyne for the package of satellite services delivered; the guest pays nothing.

4. Spectradyne also provides interactive guest services such as video checkout, video messaging, video breakfast menu and room availability monitoring. Through these services, a guest may review his bill, check out of the hotel, retrieve messages and order breakfast through the television set in his room. The hotel's staff can also inform the front desk that a room has been made ready for occupancy. All of Spectradyne's interactive services are provided through wiring wholly within the hotel.

5. Some Spectradyne-served hotels are not served by area cable systems, or existing cable systems do not reach Spectradyne-served hotels. There are also cases in which hotels choose not to use local cable systems. Therefore, from time to time, because Spectradyne has the specialized skill and experience in television technology, Spectradyne also installs roof-top, over-the-air broadcast station receiving antennas at a hotel in which Spectradyne delivers its other services. Such antenna installation is most often done when Spectradyne prepares the hotel MATV for Spectradyne's services. Spectradyne typically erects such antennas for local broadcast reception at no charge as part of the hotel's agreement to take other Spectradyne services for a certain period of time. In some instances, a nominal periodic maintenance fee for the antenna and for the maintenance of the hotel's internal wiring and delivery system is charged. Spectradyne does not charge the hotel or the guest a per channel fee or a fee of any form for the

relay of local broadcast station signals to guests. The local signals are relayed to guest rooms without interruption of any form and without delay. In other cases, hotels served by Spectradyne already receive over-the-air local broadcast signals over receiving and signal relay equipment in place at the time Spectradyne's services are installed. In those instances, Spectradyne characteristically only boosts and clarifies the signals and provides them alongside Spectradyne's newly-installed signals.

Notice of Proposed Rule Making

6. On October 5, 1992, the Cable Television Consumer Protection and Competition Act of 1992 (herein, "The 1992 Act") was passed. By the Notice, the Commission seeks comment on the adoption and implementation of regulations relating to mandatory broadcast signal carriage and retransmission consents. As The 1992 Act and the Notice do not address the niche services provided by Spectradyne to hotels, Spectradyne submits these comments. Additionally, since the rights of local television broadcasters to carriage on cable television systems on a mandatory basis do not encompass Spectradyne's typically closed-circuit, in-hotel operations, Spectradyne's comments are limited primarily to The 1992 Act's prohibition against multichannel video programming distributors' carrying the signals of television stations without first obtaining consent from those stations.¹

¹ "... no ... multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except ... with the express authority of the originating station ... " Conference Report on S.12, Cable Television Consumer Protection & Competition Act of 1992 (herein "Conference Report"); Findings of Congress, Congressional Record, H8308, Section 6,

7. In the Notice, the Commission points out that Congress, in passing the 1992 Act, concluded that there is substantial governmental interest in ensuring that cable subscribers have access to local broadcast stations and that the system of free, over-the-air television broadcast stations must be protected. Regarding the imposition of retransmission consents on multichannel video programming distributors, the Notice cites Congress' conclusion that a substantial portion of the fees subscribers pay to cable systems is attributable to the value subscribers place on viewing broadcast signals.² In sum, the Notice reaffirms Congressional intent to protect free over-the-air³ television broadcasting as well as the observation that cable systems benefit from subscriber desires for a clean over-the-air signal.

Discussion

8. However, Spectradyne's typically closed-circuit, single hotel operations, in which over-the-air broadcast signals are delivered to hotel guests as a result of Spectradyne's hotel MATV improvements, do not constitute a cable system,⁴ and Spectradyne submits that the simple incidental relay of over-the-air local broadcast signals are not the sort of activity Congress meant to address when imposing retransmission consent requirements. The

September 14, 1992; 47 U.S.C. § 325(b)(1)(A), as amended.

² Notice of Proposed Rule Making, MM Docket No. 92-259, paragraph 4 (FCC, released November 19, 1992).

³ "[Local broadcast television] programming is otherwise free to those who own television sets and do not require cable transmission to receive broadcast signals. There is a substantial governmental interest in promoting the continued availability of such free television programming" Conference Report, Section 2(a)(12).

⁴ See Report and Order "In the Matter of Definition of a Cable Television System," MM Docket No. 89-35, released December 21, 1990, paragraph 5.

hotel guests do not pay an identifiable fee for the improved over-the-air signal incidentally provided by the hotel or by Spectradyne. The local station signals come with the room as an amenity provided by the hotel. The hotel does not pay Spectradyne a per-station fee or any identifiable fee for one or a group of over-the-air local broadcast stations. Spectradyne provides the signal-reception equipment either for free or at a nominal equipment fee. In most cases, the signal-reception equipment is owned and maintained by the hotel. The over-the-air signals simply travel over the same hotel-owned MATV as the pay-per-view and satellite programming delivered by Spectradyne. Spectradyne does not directly benefit from the delivery of the over-the-air signals by the hotel or by inclusion of the over-the-air signals among those sold by Spectradyne to guests and to the hotel for the guests. The beneficiary of the incidental relay of over-the-air signals to the hotel is a guest that is happy with the quality of local broadcast pictures; the benefit to Spectradyne, in those cases where Spectradyne assists in delivering the cleaner signal, is a hotel happy with Spectradyne's service -- a hotel that will likely continue Spectradyne's pay-per-view and free-to-guest and other services to the hotel guests.

9. Although Spectradyne's in-hotel, closed-circuit signal delivery is not a cable system, Spectradyne might fairly be found to be a "multichannel video programming distributor," as Spectradyne "makes available for purchase, by subscribers [hotel guests] or customers [hotels], multiple channels of video

programming." ⁵ Spectradyne typically delivers eight channels of simultaneous pay-per-view programming, one channel of which is available for guests to use to select from dozens of additional view-on-demand pay programming choices in some hotels. Some Spectradyne-served hotels receive as many as five free-to-guest satellite television programs simultaneously. In some hotels, then, Spectradyne-delivered programming may occupy twelve or more channels on the guest's in-room television. All in addition to the numerous over-the-air choices available on the same television set provided free to the guest by the hotel.

10. In the Notice, the Commission notes that, although the literal language of the definition (of a multichannel video program distributor) is broad in its coverage, the objective of the definition appears to leave the Commission flexibility to create a measure of regulatory parity among entities in the same market.⁶ It is that parity which Spectradyne seeks, both on behalf of Spectradyne, where Spectradyne takes active steps to relay the local over-the-air signal for a hotel, and on behalf of Spectradyne-served hotels where the hotels already deliver the local over-the-air signals to hotel guests, and such signals are merely mixed among those later offered by Spectradyne.

⁵ 47 U.S.C. §522(12), as amended; Section 602 of the Communications Act of 1934; Conference Report, Section 2(c).

⁶ Notice of Proposed Rule Making, MM Docket No. 92-259, paragraph 42 (FCC, released November 19, 1992). See also Conference Report at Section 2(a)(6): "There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media."

11. If Spectradyne were captured in the legislative scheme, and if by regulation Spectradyne were found to be a multichannel video programming distributor upon whom the burden of seeking signal relay consent should be imposed, Spectradyne would be required to seek and obtain such consent, from each local station, for each closed-circuit hotel structure in a given community. However, a cable system serving that same community would be required to seek retransmission consent from each station only once in order to serve the entire community, even though the cable system might not extend to the hotel structure. It could be envisioned that the economics of the administrative burden of seeking such hotel-by-hotel, station-by-station consent would effectively prohibit Spectradyne from participating in the delivery of local over-the-air signal relay at any but the very largest hotels. Similarly, if this burden were imposed on hotels, without regard to Spectradyne's presence in the hotel, the hotel might elect not to seek consent and, if available, elect to simply receive the local station through the community's cable system -- effectively denying the hotel the benefits of real competition in the local cable market.⁷

12. Spectradyne submits that such was not the intent of Congress in enacting the statute. Accordingly, exemptions from the

⁷ Congress further articulated this concern in its statement of findings and policy on The 1992 Act. Congress found that cable systems compete with local stations for viewership and advertiser revenues, and thus have an economic incentive not to carry local broadcast signals. "Without the presence of another multichannel video programming distributor, a cable system faces no local competition. The result is undue market power for the cable operator as compared to that [market power] of consumers and video programmers." Conference Report Section 2(a)(2) and 2(a)(15).

requirement of retransmission consent should be framed for entities, such as Spectradyne, which only incidentally participate in the relay of over-the-air local broadcast signals for hotels or other such structures. Where the local signal is delivered to multiple occupants from a receiving antenna at a structure such as a hotel, and the signal is not delayed or edited in any way, no consent for retransmission should be necessary simply because the signal is simultaneously relayed to dozens of guest rooms. The Commission might also frame an exemption for such signals; specifically that the relay of such signals is not an activity that requires retransmission consent.

13. Spectradyne finds itself in the narrow niche of either (1) providing technical assistance to hotels in relaying over-the-air local broadcast signals to hotel guests or (2) being simply part of the existing channel line-up at some hotels in which Spectradyne's programming is on the guest-room dial along with hotel-delivered local signals. As such, under The 1992 Act, Spectradyne might be construed to be a multichannel video programming distributor and be required to obtain consent of each such local station for inclusion of that station's signal among those delivered at the hotel.

14. With more than 2300 hotels served in hundreds of communities, the administrative and procedural burden of obtaining such consents would compel Spectradyne to no longer assist hotels in bringing clear local signals to guests and to impose unwieldy physical separations between Spectradyne-delivered programming and

over-the-air signals present on the same hotel MATV. Neither scenario would be attractive to hotels; either scenario would constitute such a burden on Spectradyme and on the hotel as to effectively foreclose any entity but the local cable company from delivering local signals.

Conclusion

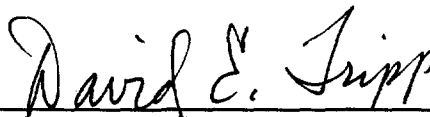
Federal policy, as articulated by Congress and the FCC, is to promote and encourage development of competition to traditional wired cable systems through the availability of alternative video services such as those closed-circuit guest-pay, guest-interactive, and free-to-guest services provided by Spectradyme.

In implementing regulations to construe The 1992 Act, the Commission can pursue this policy by exempting hotels and persons serving hotels with closed-circuit, non-cable-delivered multiple video signals from the requirement of obtaining local broadcast television stations' retransmission consent.

Constricting competition and effectively denying some hotel guests access to local signals was not the legislative intent behind The 1992 Act. The Commission should implement regulations exempting hotels and entities that serve hotels and similar structures from the obligation of obtaining retransmission consents for closed-circuit relay of local signals.

Respectfully submitted

Dated: December 29, 1992



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